Ekambaram a/l Savarimuthu v Ketua Polis Daerah Melaka Tengah & Ors

HIGH COURT (MELAKA) — ORIGINATING MOTION NO 25-25-1996
SURIYADI J
17 MARCH 1997

Public Servants — *Dismissal from Police Force — Charge of wilful disobedience of order — Failure to obtain approval before purchasing a car — Applicant pleaded guilty — Whether applicant ought to be dismissed — Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970 Schedule — Perintah Tetap Ketua Polis Negara Bhg A HTKPN Bhg A207 — Public Officers (Conduct and Discipline) Regulations 1993 (Cap D) reg 28*

Public Servants — *Dismissal — Natural justice — Breach of — Applicant was not informed of possibility of dismissal if found guilty — Whether breach of rule of audi alteram partem — Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970 Schedule — Perintah Tetap Ketua Polis Negara Bhg A HTKPN Bhg A207 — Public Officers (Conduct and Discipline) Regulations 1993 (Cap D) reg 28*

Administrative Law — *Rights and liabilities of public servants — Dismissal from Police Force, whether dismissal wrongful — Applicant was not informed of possibility of dismissal if found guilty — Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970 Schedule — Perintah Tetap Ketua Polis Negara Bhg A HTKPN Bhg A207 — Public Officers (Conduct and Discipline) Regulations 1993 (Cap D) reg 28*

Administrative Law — *Rules of natural justice — Disciplinary proceedings — Right to be heard — Disciplinary board took into account previous records of applicant without affording applicant opportunity to explain or reply — Whether infringement of rule of natural justice — Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970 Schedule — Perintah Tetap Ketua Polis Negara Bhg A HTKPN Bhg A207 — Public Officers (Conduct and Discipline) Regulations 1993 (Cap D) reg 28*

Public Servants — *Dismissal from Police Force — Sentence, whether irrational and disproportionate to the offence commited — Charge of wilful disobedience of order — Failure to obtain approval before purchasing a car — Applicant pleaded guilty — Applicant was dismissed — Whether sentence of dismissal was irrational and disproportionate — Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970 Schedule — Perintah Tetap Ketua Polis Negara Bhg A HTKPN Bhg A207 — Public Officers (Conduct and Discipline) Regulations 1993 (Cap D) reg 28*

Administrative Law — *Remedies — Certiorari — Sentence, whether irrational and disproportionate to the offence commited — Charge of wilful disobedience of order — Failure to obtain approval before purchasing a car — Applicant pleaded guilty — Applicant was dismissed — Whether sentence of dismissal was irrational and disproportionate — Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970 Schedule — Perintah Tetap Ketua Polis Negara Bhg A HTKPN Bhg A207 — Public Officers (Conduct and Discipline) Regulations 1993 (Cap D) reg 28*

The applicant had, on 1 February 1991, applied to his head of department to buy a car bearing registration No MU 8059. This was done in order to comply with the Perintah Tetap Ketua Polis Negara Bhg HTKPN ('A207'). The application was approved on 9 March

A 1991. On 12 November 1993, the applicant bought a new car bearing registration No MAB 6020 without obtaining any prior approval from his superiors. On 4 June 1996, the applicant received a letter from the OCPD of Melaka Tengah, who signed as the 'pegawai penguasa pengadil' ('the presiding officer') informing him of a decision B to initiate disciplinary proceedings against him pursuant to the Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970 ('the Regulations') and attaching the charge alleging that the applicant had committed an offence of wilfully disobeying a lawful order. On 10 June 1996, the applicant submitted the relevant application regarding the usage of the new car which was supported C by the applicant's immediate head of department. At the hearing of the disciplinary proceedings, the applicant, who was not informed of the possibility that he would be dismissed in the event of being found guilty of the charge, pleaded guilty to the charge. The presiding officer referred to the applicant's past records and without according D him the opportunity to explain, justify or even correct the records meted out the sentence of dismissal. The applicant was dismissed from the police force after having been found guilty of a disciplinary offence under the Schedule to Regulations for wilfully disobeying an order.

E **Held**, allowing the application for certiorari and quashing the order of dismissal:

(1) As it was contemplated that the applicant would be dismissed and was indeed dismissed, pursuant to the Regulations and reg 28 of the Public Officers (Conduct and Discipline) Regulations F 1993 (Cap D), the applicant should have been informed of that contemplation. By the addendum in A207, the provisions in reg 28 of Cap D 1993 which necessitate the officer who is to be dismissed or reduced in rank to be informed of the possible sentence if found guilty, apply to junior police officers and G constables. By not informing the applicant of the possible dismissal, the tribunal was in breach of the audi alteram partem rule (see p 460E–F); *B Surinder Singh Kandar v The Government of Federation of Malaya* [1962] MLJ 169 and *De Souza Lionel Jerome v A-G* [1993] 1 SLR 882 followed.

H (2) The disciplinary board took into account the previous records of the applicant which were extremely prejudicial to the applicant's case without affording the applicant the opportunity to explain or reply to those records. This procedural defect had infringed the rights of the applicant and was clearly an infringement of the rule of natural justice (see pp 460I and 461A); *Shamsiah bte* I *Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364, *Raja Abdul Malek Muzaffar Shah Bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619 and *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114 followed.

(3) The sentence handed down by the presiding officer was irrational and disproportionate to the offence. The only error committed by the applicant was his failure to obtain permission from his head of department for the usage of the car which was merely administrative in nature which certainly did not create untold damage or bring the name of the police force into disrepute. The applicant's offence certainly did not merit a dismissal. Therefore, the sentence went against all tenets of rationality and was a decision which was so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it, (see pp 461H–I and 463D–E); *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 followed.

[Bahasa Malaysia summary

Pada 1 Februari 1991, pemohon telah membuat permohonan kepada ketua jabatannya untuk membeli sebuah kereta yang mempunyai nombor berdaftar MU 8059. Ini dilakukan demi mematuhi Perintah Tetap Ketua Polis Negara Bhg HTKPN ('A207'). Permohonan diluluskan pada 9 Mac 1991. Pada 12 November 1993, pemohon telah membeli kereta baru nombor daftarnya MAB 6020 tanpa memperolehi sebarang kelulusan terdahulu dari pegawai atasan. Pada 4 Jun 1996, pemohon telah menerima sepucuk surat daripada OCPD Melaka Tengah, yang menandatangani sebagai pegawai penguasa pengadil ('pegawai yang menjadi pengerusi') yang memberitahunya tentang keputusan untuk memulakan prosiding tatatertib terhadapnya menurut Peraturan-Peraturan Polis (Kelakuan dan Tatatertib) (Polis Pegawai Rendah dan Konstabel) 1970 ('Peraturan tersebut') dan melampirkan pertuduhan yang mengatakan bahawa pemohon telah melakukan kesalahan sengaja mengingkari perintah yang sah. Pada 10 Jun 1996, pemohon menyerahkan permohonan yang relevan mengenai penggunaan kereta baru yang disokong oleh ketua terdekat jabatan pemohon. Di pembicaraan prosiding tatatertib, pemohon, yang tidak diberitahu tentang kemungkinan dia akan dipecat jika didapati bersalah atas pertuduhan, mengaku salah atas pertuduhan itu. Pegawai yang menjadi pengerusi merujuk kepada rekod lama pemohon dan tanpa memberikannya peluang untuk menjelas, memberi justifikasi atau untuk membetulkan rekod menjatuhkan hukuman pemecatan. Pemohon dipecat daripada angkatan polis selepas didapati bersalah atas kesalahan tatatertib di bawah Jadual kepada Peraturan tersebut kerana dengan sengajanya mengingkari suatu perintah.

Diputuskan, membenarkan permohonan untuk certiorari dan membatalkan perintah pemecatan:

(1) Oleh kerana ia adalah mungkin bahawa pemohon akan dipecat dan memang dipecat, menurut Peraturan tersebut dan peraturan 28 Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 (Bab D), pemohon sepatutnya telah diberitahu

tentang kemungkinan itu. Menerusi tambahan dalam A207, peruntukan dalam peraturan 28 Bab D 1993 yang menghendaki pegawai yang akan dipecat atau diturunkan pangkat diberitahu tentang hukuman yang mungkin jika didapati bersalah, terpakai kepada pegawai polis rendah dan konstabel. Dengan tidak memberitahu pemohon tentang kemungkinan pemecatan, tribunal itu telah melanggar rukun audi alteram partem (lihat ms 460E–F); *B Surinder Singh Kandar v The Government of Federation of Malaya* [1962] MLJ 169 dan *De Souza Lionel Jerome v A-G* [1993] 1 SLR 882 diikut.

(2) Lembaga tatatertib mengambil kira rekod lama pemohon yang amat memudaratkan kes pemohon tanpa memberikan pemohon peluang untuk memberi penjelasan atau menjawab rekod-rekod. Kecacatan prosedur ini telah melanggar hak-hak pemohon dan jelas merupakan pelanggaran rukun keadilan asasi (lihat ms 460I dan 461A); *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364, *Raja Abdul Malek Muzaffar Shah Bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619 dan *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114 diikut.

(3) Hukuman yang dijatuhkan oleh pegawai yang menjadi pengerusi adalah tidak rasional dan tidak sekadar dengan kesalahan. Satu-satunya kesilapan yang dilakukan oleh pemohon adalah kegagalannya untuk memperolehi kebenaran daripada ketua jabatannya untuk penggunaan kereta yang lebih bersifat pentadbiran yang jelas tidak menyebabkan kerosakan atau menjatuhkan nama angkatan polis. Kesalahan pemohon tidak wajar dihukum dengan pemecatan. Oleh itu, hukuman itu melanggar semua rukun kerasionalan dan adalah keputusan yang begitu mengejutkan dalam keingkaran logik atau darjah moral yang diterima hinggakan tiada orang yang munasabah yang telah meneliti persoalan yang harus diputuskan boleh mencapai keputusan tersebut (lihat ms 461H–I dan 463D–E); *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 diikut.]

Notes

For cases on dismissal of a public servant, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1525–1563.

For cases on the rights and liabilities of a public servant, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 404–452.

For cases on the rules of natural justice, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 453–501.

For cases on certiorari, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 96–227.

Cases referred to

B Surinder Singh Kandar v The Government of Federation of Malaya [1962] MLJ 169 (folld)

De Souza Lionel Jerome v A-G [1993] 1 SLR 882 (folld) A
Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 114 (folld)
Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 CLJ 619 (folld)
R Rama Chandran v Industrial Court of Malaysia & Anor [1997] 1 MLJ 145 (folld) B
Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor [1990] 3 MLJ 364 (folld)

Legislation referred to

Federal Constitution art 132(2) C
Police (Conduct and Discipline) (Junior Police Officer and Constables) Regulations 1970 reg 2 item (7)
Police Act 1967 ss 74, 96
Rules of the High Court 1980 O 53(1)

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Subramaniam Nair (*Maniam Nair & Co*) for the applicant.
Meor Hashimi bin Abdul Hamid (Legal Adviser's Chambers, Melaka) for the defendant.

Suriyadi J: With effect from 10 July 1996, the applicant was dismissed from the police force after having been found guilty of a disciplinary E offence under item (7) the Schedule to reg 2 of the Police (Conduct And Discipline) (Junior Police Officer and Constables) Regulations 1970 (PU (A) 86/70) of wilfully disobeying an order. Going back in time with regard to the facts, it was not denied that on 1 February 1991, the applicant had applied via his head of department to buy a car, bearing F registration No MU 8059. On 9 March 1991, the Chief Police Officer of Melaka gave his permission and his position was thus secure as he had complied with the Perintah Tetap Ketua Polis Negara Bhg A HTKPN Bhg A207 ('A207'). See exh EK1 regarding the letter of approval. On 12 November 1993, the applicant bought a new car bearing registration No MAB 6020 without obtaining any prior approval from his superiors. G This fact was not a secret as he was often seen with the new car at the premises of the Jasin police station. He alleged that as he was not informed of the necessity to submit a new application form on the mistaken belief that the previous consent was sufficient, and being oblivous of the requirements of the provisions of A207, blissfully carried on using it. H

On 25 April 1996, the first sing of trouble reared its ugly head when a police officer from the Ibu Pejabat Polis Kontingen Jalan Melaka appeared on the scene making enquiries as to that car. On 4 June 1996, the applicant received a letter dated 3 June 1996 from the OCPD of Melaka Tengah, who signed as the 'pegawai penguasa pengadil', informing him of a decision I to initiate disciplinary proceedings against him pursuant to PU (A) 86/70. Attached to this letter was the charge which alleged that he had committed an offence of wilfully disobeying a lawful order. That was all the documentation he received (EK2 encl 12). Being slightly wiser of the

A departmental requirement, he submitted the relevant application on 10 June 1996 regarding the usage of the new car. On 4 July 1996, the Jasin OCPD, who was his immediate head of department, processed and recommended the application. Despite this prompt action of his superior, the disciplinary proceedings still went on. It was not denied, as per encl 15, B and clarified by the affidavit of Mat Drus bin Sudin who acted as the pegawai penguasa pengadil, that at the hearing day, the applicant pleaded guilty to the charge. The presiding officer referred to the applicant's past records and without according him the opportunity to explain, justify or even correct the records, meted out the sentence of dismissal.

C For purposes of this case, it is pertinent for me to highlight the prevailing legal position in para 23 of the Perintah-Perintah Am Bab A–Bab D 1980 had been repealed earlier and replaced accordingly by the Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 ('Bab D 1993') with effect from 15 December 1993. In Bab D 1993 is found reg 28 which reads:

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> (1) Pihak Berkuasa Tatatertib yang berkenaan yang bersidang untuk menimbangkan suatu kes yang pelanggaran tatatertib yang diadukan adalah didapati daripada jenis yang patut dikenakan suatu hukuman buang kerja atau turun pangkat hendaklah menimbangkan segala maklumat yang ada dan jika didapati bahawa terdapat suatu kes *prima facie* terhadap pegawai itu untuk dibuang kerja atau diturunkan pangkat, E Pihak Berkuasa Tatatertib yang berkenaan hendaklah mengarahkan supaya suatu pernyataan yang mengandungi fakta-fakta pelanggaran tatatertib yang dikatakan telah dilakukan oleh pegawai itu dan apa-apa alasan yang dicadangkan yang berdasarkannya pegawai itu hendak dibuang kerja atau diturunkan pangkat dihantarkan kepada pegawai itu dan pegawai itu hendaklah diminta membuat suatu representasi bertulis, F yang mengandungi alasan-alasan yang berdasarkannya pegawai itu bergantung untuk membebaskan dirinya, dalam tempoh tidak kurang daripada dua puluh satu hari dari tarikh penerimaan pertuduhan itu.

In a gist, this provision expects the pihak berkuasa tatatertib to inform an officer who is to be dismissed or reduced in rank pursuant to a disciplinary G proceeding, to be informed of that possible sentence if found guilty.

Under s 74 of the Police Act 1967 ('the Act'), all members of the police force shall be subject to the provisions of regulations relating to discipline as may from time to time be made by the Yang di-Pertuan Agong under art 132(2) of the Federal Constitution or under s 96 of the H Act. Under the latter section, the Yang di-Pertuan Agong may make regulations to be called 'Police Regulations' relating among others on matters of discipline, including the definition of disciplinary offences, disciplinary procedure and the regulation and carrying out of punishment (pursuant to s 18 of the Act, police officers are subject to the provisions applicable to public officers). It was by virtue of s 74 of Act read in I conjunction with s 18 that the Perintah Tetap Ketua Polis Negara HTKPN Bhg A207, was formulated. Section 1 of A207 provided that junior police officers and constables (applicable to the applicant here) are subjected to PU (A) 86/70 whilst all senior police officers are governed by Bab D 1993. There is a difference in the treatment of dismissal proceedings for the two

strata in that where officers are concerned, if a dismissal is envisaged, he is accordingly informed of that possibility. For the junior police officers and constables, that additional protection is not provided for.

Perhaps it is due to the dissimilarity in the procedure that the applicant was not informed of the possibility that he would be dismissed in the event of being found guilty of the charge. Perhaps it was due to this interpretation that Mat Drus bin Sudin (the pegawai penguasa pengadil) in encl 15 para 16 asserted that the repealed Bab D 1980 was inapplicable to the applicant. It is unfortunate that even though he mentioned that the latter regulation had been repealed, with the safeguards still intact in Bab D 1993, he stopped short of reciting the addendum in A207 which reads:

> However, where certain provision under General Orders Cap 'D' are not expressly provided for under the Police Regulations 1970, such provisions under General Orders Cap 'D' shall be applicable to Junior Police Officers and Constables.

In this context, the General Orders Cap 'D' is to be read as Bab D 1993 as this law had replaced the Public Officers (Conduct and Discipline) (Cap D) General Orders 1980. By the construction of the above addendum, it will mean that as the procedure and safeguard similar to reg 28 of Bab D 1993 is not made available to a subject in PU (A) 86/70, then the contents of reg 28 will be applicable for the added benefit of the junior officers and constables. For purposes of our case, as it was contemplated that he would be dismissed, and was indeed dismissed, the applicant, pursuant to PU (A) 86/70 and reg 28 Bab D 1993, therefore, should have been informed of that contemplation.

By not informing him of the possible dismissal, the tribunal was in breach of the audi alteram partem rule (see *B Surinder Singh Kandar v The Government of Federation of Malaya* [1962] MLJ 169; *De Souza Lionel Jerome v A-G* [1993] 1 SLR 882). Perhaps due to the lackadasical attitude of the disciplinary board regarding the whole proceeding, the applicant did not take the matter too seriously and hence pleaded guilty. It must have shaken his whole moral fibre when he was informed of that sentence. It would not be unreasonable to remark that had he known of the outcome if found guilty, his approach and attitude to the whole proceeding would not have been that cavalier. He would have come better prepared, and probably afford a better explanation. Certainly, he would not have pleaded guilty.

It could also be assumed that by not sending the information as provided by reg 28 of Bab D 1993, the applicant must have mistakenly believed that the disciplinary board did not deem it necessary to dismiss him.

A disheartening feature revealed by the available evidence was that, the disciplinary board took into account his previous records even before he was accorded the opportunity to explain or reply to those records. In no uncertain terms, without the benefit of his rebuttal, the contents of that record of service conspicuously influenced the mind of the adjudicating body resulting in the imposition of the severest punishment permissible

A under the relevant regulation. This procedural defect which had infringed the rights of the applicant was clearly an infringement of the rule of natural justice (see *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364). The Court of Appeal in *Raja Abdul Malek Muzaffar Shah Bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan*
B *Polis & Ors* [1995] 1 CLJ 619 also followed the proposition of *Shamsiah bte Ahmad Sham* and *B Surinder Singh Kandar* in that a fair procedure included a duty on the part of an arbitor not to take into account matters that had not been put to the applicant and he be given the opportunity to rebut or to comment upon that matter. Jemuri Serjan CJ (Borneo) in *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia*
C *& Anor* [1994] 2 MLJ 114 at p 126 aptly put it when he said:

> If, in fact, it could be established that that statement was prejudicial to the appellant's case and taken into consideration without affording the appellant the opportunity to explain, correct or contradict it, and it did in fact influence the decision of the respondent to dismiss the appellant, then it
D would be a ground for us to intervene, allow the appeal and order the issue of certiorari. Certiorari would lie under these circumstances but would not not be on the ground of unreasonableness in the comprehensive sense as explained by Lord Greene MR, but on the ground of breach of natural justice. It would be a breach of natural justice because the appellant was denied the right to explain, correct or contradict the statement which he
E considered to be prejudicial to his case.

In *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364 at p 368, his Lordship Jemuri Serjan CJ also said:

> We are not saying and should not be quoted as saying that the past record of the appellant should not be taken into account in considering her guilt or
F the appropriate punishment if she were found guilty of the charge. What we are saying is that if these materials which have such damning effect on her case are to be used against her, she should be given a right to be heard on them. It is not a matter of pure technicality but it is absolutely fundamental in law that the appellant should have been given an opportunity of stating her case regarding her past conducts, considering that the dismissal of a
G civil servant is no light matter.

It is evident in the current case that a grave injustice had befallen the applicant as he was never afforded that opportunity to explain, correct or contradict the previous records referred to by the pegawai penguasa pengadil which were extremely prejudicial to his case.

H Another interconnected issue which I found to be a cause for concern was the irrationally and proportionality of the sentence vis-a-vis that of the offence committed. The only error committed by him in this case was his failure to obtain permission from his head of department for the usage of the car which was merely administrative in nature, an oversight which certainly did not create untold damage or bring the name of the police force
I into disrepute. His family considerations, his plea of guilt which is a mitigating factor, the fact that he had attempted to rectify his mistake by making a new application, that he had put in 15 years of service, that he had a wife and four children with two still school-going, that he had apologized

and that he had asked for another chance were totally disregarded. It was beyond my comprehension as to how the pegawai penguasa pengadil, even though empowered by the Suratcara Perwakilan Fungsi-Fungsi, Kuasa-Kuasa, Tugas-Tugas dan Tanggungjawab-Tanggungjawab Tertentu (see PU (B) 621), by virtue of his rank as the assistant commissioner of police, could have arrived at the finding that the offence justified the draconian decision of an immediate dismissal. This bizarre sentence went against all tenets of rationality and on that consideration I deemed it fit to scrutinize the case, not only in relation to the process, but also for substance. On this point, I was guided by the case of *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 in particular by the remarks of Edgar Joseph Jr FCJ at p 187 where he said:

> In this context, it is useful to note how Lord Diplock (at pp 410–411) [in *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1985] AC 374] defined the three grounds of review, to wit, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it:
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> '... By "irrationality" I mean what can by now be succinctly referred to as "*Wednesbury* unreasonableness" (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v Bairstow* [1956] AC 14, of irrationally as a ground for a court's reversal of a decision of ascribing it to an inferred though undefinable mistake of law by the decision maker. "Irrationality" by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.'

At p 188B–C, his Lordship further said:

> Lord Diplock's second ground for challenge, namely, 'irrationality' recognizes a different route whereby the *substance* of a decision may be reviewed by the courts. By this means, Lord Diplock made it clear that despite being legal, that is to say within the powers conferred, a decision may nevertheless, be struck down, for being contrary to *substantive principles*. In the words of Lord Diplock, 'a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it'.

In the course of my research while perusing PU (A) 86/70, an offender could face these following punishments if found guilty, namely:

(i) extra drill for a time not exceeding two hours a day with 10 minutes rest after each hour of the extra drill for a period not exceeding five days;

(ii) fatigue duty for a time not exceeding four hour a day with 10 minutes rest after each hour of the fatigue duty for a period not exceeding five days;

(iii) extra guard duty for a time not exceeding four hours a day for a period not exceeding five days;

(iv) reprimand;

(v) severe reprimand;

(vi) fine not exceeding one month's pay;

(vii) stoppage of increment;

(viii) deferment of increment;

(ix) reduction in rank; and

(x) dismissal.

With such a wide choice of punishments available for the pegawai penguasa pengadil to choose, it was beyond the court's comprehension as to why the stiffest sentence was chosen. The applicant and his wife had the funds to pay for that car and neither was there any allegation of corruption connected to the buying of that car. In fact, the previous Chief Police Officer had deemed it fit to approve his previous application, but now by reason of a mere administrative oversight, he and his family will face a bleak future. To repeat the words of Lord Diplock, the sentence was 'a decision which was so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it'.

The next legal poser which I could not ignore was the proportionally or improportionality of the sentence handed down by the pegawai penguasa pengadil. On the availability of the court's powers to interface and quash the sentence, I reproduce what Edgar Joseph Jr FCJ further said at pp 188–190 which reads:

> Turning to Lord Diplock's fourth ground of judicial review — namely, proportionality — there are cases in the United Kingdom which point to the conclusion that even where EEC law is not applicable, such a principle has been recognized as a general principle of English law, and when applied, it enables the court to review an impugned decision for *substance* as well as process.
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> In India, in *Ranjit Thakur v Union of India* AIR 1987 SC 2386 — a case where the quantum of punishment imposed by a court martial was in issue — Venkatchalia J, speaking for the Supreme Court said this (at p 2392):
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> > '... The doctrine of proportionality, as part of the concept of Judicial Review would ensure that even on all aspect which is otherwise within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence should not be immune form correction.'
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> ...
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> In Malaysia, in *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261, an appeal arising from the dismissal of a suit by the High Court at Johor Bahru, in a case concerning a headmaster of a national type government school, who had been dismissed from service ... Gopal Sri

Ram JCA, speaking for the majority in the Court of Appeal, did specifically use the term 'disproportionate' when he quite correctly quashed the order of dismissal and substituted, in lieu thereof, an order that the employee be reduced in rank and be paid all arrears of salary and other emoluments due to him.

If one were to scrutinize the 66 offences under the Schedule provided by PU (A) 86/70, there were more than ample serious offences in the Schedule to deserve a dismissal. They were in the like of showing cowardice in the execution of his duty, discharging firearm without authority or reasonsible cause, committing any act of plunder or wanton distruction of property or is in unlawful possession of any arm, ammunition, accoutrement, uniform or other public property or of any prisoner's property. Anyone found guilty of those serious offences certainly would have deserved a dismissal and no eyebrows would have raised. By comparison, the applicant's offence was pin prick which certainly did not merit such a sentence.

After having perused the facts, it was sufficient for me to grant the application for certiorari (pursuant to O 53(1) of the Rules of the High Court 1980) whereby the order dated 10 July 1996 be quashed merely on the grounds that:

(i) the applicant was not informed of the possibility of his dismissal from the service;

(ii) the pegawai penguasa pengadil considered his record of service which was prejudicial to him without affording him a reasonable opportunity to explain, contradict or correct the contents of the documents; and

(iii) the sentence was irrational and disproportionate to the offence.

Application granted.

Reported by Khoo Chuan Swee